

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS

DANA-FARBER CANCER)
INSTITUTE, INC. a/k/a THE)
JIMMY FUND,)

Plaintiff)

Case No.: 04-CV-12612-RWZ

v.)

BOC GROUP, INC. d/b/a BOC)
GASES,)

Defendant/Third-Party Plaintiff/)
Counterclaim Defendant,)

v.)

TAYLOR-WHARTON, HARSCO)
CORPORATION, GAS & FLUID)
CONTROL GROUP,)

and)

PACER DIGITAL SYSTEMS INC.,)

Third-Party Defendants/)
Counterclaim Plaintiff.)

**BOC GROUP, INC. d/b/a BOC GASES' ANSWER AND AFFIRMATIVE
DEFENSES TO PACER DIGITAL SYSTEMS, INC.'S COUNTERCLAIM**

BOC Group, Inc. d/b/a BOC Gases ("BOC"), hereby answers the Counterclaim of
Pacer Digital Systems Inc. ("Pacer") as follows:

1. Admitted.
2. Admitted.
3. Denied.

4. Denied.

5. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Pacer's counterclaim fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Pacer's counterclaim is barred by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

If the plaintiff was damaged as alleged in the underlying Complaint, which is denied, such damages were not caused by the conduct of a person or entity for which BOC is legally responsible.

FOURTH AFFIRMATIVE DEFENSE

Pacer's negligence exceeded any negligence of BOC, and, therefore, Pacer is precluded from recovering any damages.

FIFTH AFFIRMATIVE DEFENSE

If Pacer suffered any damages as alleged in the counterclaim, which is denied, such damages were caused in whole or in part by its own conduct so that any recovery is barred.

SIXTH AFFIRMATIVE DEFENSE

If Pacer suffered damages as alleged, then such damages were caused by its own contributory negligence, and therefore any recovery by Pacer should be reduced by the proportion of its contributory negligence.

SEVENTH AFFIRMATIVE DEFENSE

Pacer cannot recover from BOC because its alleged damages were the result of an intervening and/or superseding cause.

EIGHTH AFFIRMATIVE DEFENSE

Pacer has failed to join indispensable parties whose absence will impair or impede BOC's ability to defend itself.

NINTH AFFIRMATIVE DEFENSE

Pacer, by its actions and/or inactions is estopped from recovering from BOC.

TENTH AFFIRMATIVE DEFENSE

Pacer's counterclaim is barred, in whole or in part, by the economic loss doctrine.

ELEVENTH AFFIRMATIVE DEFENSE

Pacer's counterclaim is barred, in whole or in part, by its own assumption of risk.

TWELFTH AFFIRMATIVE DEFENSE

Pacer's counterclaim is barred, in whole or in part, because it failed to mitigate its damages.

WHEREFORE, BOC Group, Inc. d/b/a BOC Gases, demands that the counterclaim of Pacer Digital Systems Inc. be dismissed with prejudice and that it be awarded its costs and attorney fees.

BOC GROUP INC. d/b/a BOC GASES DEMANDS A TRIAL BY JURY

ON ALL COUNTS SO TRIABLE

Defendant,
BOC Group, Inc. d/b/a BOC Gases
By its attorneys,

A handwritten signature in black ink, appearing to read "Matthew P. Sgro", written over a horizontal line.

Michael P. Giunta, BBO #543768
Matthew P. Sgro, BBO #655825
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Dated: May 23, 2005

CERTIFICATE OF SERVICE

I, Matthew P. Sgro, hereby certify that on this date I caused a copy of the foregoing to be served, via first-class mail, postage prepaid, to:

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Matthew P. Sgro